IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5605 of 1999

with

CRIMINAL MISC.APPLICATION No 5607 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDIAN OVERSEAS BANK

Versus

STATE OF GUJARAT

Appearance:

MR SS PANESAR for applicant in both applications

MR KP RAVAL, APP for opponent No.1 in both applns.

MR YN RAVANI FOR MS HIMALI M DAVE for opponent No.2 in both applns.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/02/2000

COMMON ORAL JUDGEMENT

These applications have been filed by the applicant-Indian Overseas Bank having its branch office at Sarangpur Chakla, Sarangpur, Ahmedabad for quashing and setting aside the criminal complaint Nos.2054 of 1998 and 2055 of 1998 respectively filed by the present respondent No.2-original complainant in the learned Metropolitan Magistrate Court No.16, Ahmedabad under Secs. 406, 420, 465, 467, 468, 471 read with Sec.120-B of Indian Penal Code against the present applicant and others.

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#. On receiving the complaint, learned Metropolitan Magistrate sent both the complaints for investigation to Astodia Police Station and they have been numbered as Inquiry case Nos.30 of 1998 and 27 of 1998 respectively. Thereafter, Police submitted written report in the court of learned Metropolitan Magistrate, Court No.16 on 10-8-1998 in both the cases and same have been registered as Criminal Case Nos.2054 of 1998 2055 of 1998 respectively and issued process against the present petitioner and others under secs.406, 420, 465, 467, 468, 471 read with sec.120-B, 114 and 34 of Indian Penal Code. Against issuance of above process, present petitions have been filed by the petitioner-original accused.

#. I have heard learned counsel for the petitioner Mr.S.S.Panesar, learned APP for the respondent No.1-State, Mr.K.P.Raval and learned counsel for the respondent No.2-complainant, Mr.Y.N.Ravani for Ms.Himali M. Dave. Mr.Panesar has mainly argued that complaint against the Indian Overseas Bank is not maintainable and no process can be issued against the petitioner bank being a body corporate and a banking company which is beyond the reach of the physical punishment. He has also argued that if whole complaint is taken in its entirety, then also, no offence as alleged can be made out against the present petitioner bank. He has further argued that at the most this can give rise to objectionable civil wrong for which the petitioner bank may be held vicariously liable for any acts of commission or omission of its employees. He has contended that even complaint has been filed by the complainant before the Consumer Disputes Redressal Commission at Ahmedabad. He has finally argued that complaints based on civil dispute filed against the present petitioner bank are required to be quashed and set aside.

2.1 He has relied upon a case reported in AIR (36) 1949 Calcutta 689 and drawn my attention towards para 6 of the said judgment which runs as under:

> "For the section to apply it must be held that the present proceedings are against the company or against the Bank. In my opinion the present criminal proceedings are against the Bank but against the accused, the Manager of the Behala Branch. It is true that the accused was acting as the Manager of the Bank at the time that he made the representation. This fact may render the Bank civilly liable, but I cannot see how it can be said that these proceedings are against the bank itself. I do not see how a bank can be charged with cheating. The Bank is a person, but it is a juridical person and not an actual person. The Bank is such that it cannot be said to have the mens rea requisite for the offence of cheating."

It appears that finding given by the Calcutta High Court in the above reported case is based on the provisions of Sec.171 of Companies Act, 1956. Sec.171 runs as under:

> "As per the above section, when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other proceedings shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the court may impose."

Keeping in mind the above referred section, court further held that the present criminal proceedings are not against the bank, but against the accused and, therefore, as per para 7 of the judgment, court held that "I see no reason to interfere with the progress of the case and I, therefore, discharge this rule". So, above judgment and more particularly para 6 of the judgment is based mainly on sec.171 of the Companies Act and criminal proceedings were not against the bank in the above case. So, the findings of the above judgment is mainly on above two aspects of the matter. Whereas in the present case, Court has issued process against the petitioner bank also. Sec.11 of Indian Penal Code, 1860 is very clear on that aspect. In Sec.11 of Indian Penal Code, meaning of person has been defined.

"The word "person" includes any Company or Association or body of persons, whether incorporated or not."

So, Sec.11 itself is clear that present petitioner is included in the definition of a person. Whereas procedure to that aspect has been prescribed in Sec.305 of Cr.P.C. when Corporation or a registered society is an accused. In that view of the matter, complaint can be filed and process can be issued against the company or body corporate and for that, procedures as provided under Sec.305 of Cr.P.C. are required to be followed. Combined reading of Sec.11 of Indian Penal Code and Sec.305 of Code of Criminal Procedure makes it clear that complaint can be filed and process can be issued against the present petitioner.

#. Learned counsel for the petitioner has also relied upon a case reported in AIR 1964 Bombay 195 and more particularly at para 17. As per the above para of the judgment, Bombay High Court has held that as under:-

"As adumbrated, a company cannot be indictable for the offence like bigamy, perjury, rape etc. which can only be committed by human individual or for offences punishable with imprisonment or corporate punishment. Barring these exceptions, a corporate body ought to be indictable for criminal act or omission of its Directors or authorised agents or servants, whether they involve mens rea or not provided they have acted or purported to act under authority of the corporate body or in pursuance of the aims or objects of the corporate body. The question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depends on the nature of the offence disclosed by the allegations in the complaint or in the charge-sheet, the relative position of the officer or agent vis-a-vis the corporate body".

So, even as per this judgment, it has been made clear as to when complaint can be filed and when it is tenable against a corporate body. There is no absolute bar that no complaint should be filed and should be tenable against the company or corporate body. Legislature has also taken care of this question. At the end of trial, if a company or a corporate body is liable to be

punished, then in that case, only fine can be imposed on them for which sufficient care has been taken by the Legislature.

#. In view of the above discussion, the arguments advanced by the learned counsel for the petitioner that the complaint against the present petitioner bank is not tenable is required to be rejected.

#. As far as the other contentions which have been raised by the learned counsel for the petitioner regarding non-disclosure of offence and alleged dispute between the parties is of civil nature, same are not tenable because prima-facie offence has been disclosed in the complaint itself and present respondent No.2 who is the account holder of the bank has been defrauded of a huge amount by the accused and, therefore, present complaints are prima-facie tenable more particularly when the trial court issued process on scrutiny of complaint and after relying upon the report and on appreciation of the material before it. So, other arguments advanced by the learned counsel for the petitioner regarding the civil nature and non-disclosure of offence can be raised by the petitioner before the trial court and determination on merits of the same at this stage of quashing is likely to prejudice the case either of the petitioners or that of the prosecution and, therefore, it is not desirable to discuss in detail at this stage on that aspect.

#. In view of the aforesaid discussion, these Misc. Cri. Application are rejected. Rule is discharged in each petition. Interim relief granted earlier in these petitions is also vacated. It is stated by the learned counsel for the petitioner-bank that present Manager of the concerned branch of the bank has to attend the court regularly though he was not the Manager of the concerned Branch when the alleged offence has taken place. If that is so, then petitioner-bank is at liberty to pray for exemption from appearance in the court on regular dates and on filing such an exemption application, court below should look into it sympathetically and decide the same as expeditiously as possible keeping in mind the above aspects of the matter.

#. Office is directed to keep original judgment and order in Misc.Cri.Application No.5605 of 1999 and a copy of the same in Misc.Cri.Application No.5607 of 1999.

(R.P.DHOLAKIA,J.)

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